

**REMARKS**

Claims 10, 16, 18, 30 and 31 are pending. Claim 10 has been amended for clarity to exclude fatty acid esters. No new matter has been added by way of the above-amendment.

**Interview**

Applicants note with appreciation that the Examiner conducted an Interview with Applicants' representative, Garth M. Dahlen, Ph.D., Esq. (#43,575) on September 15, 2009. During the Interview, Dr. Dahlen presented the Examiner with a proposed amended claim set which is identical to the claim amendment made hereinabove.

The Examiner looked upon the proposed amended claims with favor, except that the Examiner was not willing to officially agree that the proposed amended claims would overcome all of the rejections without further review.

**Prior Art Based Issues**

The following prior art based Rejections (A), (B) and (C) have been maintained in the outstanding Office Action:

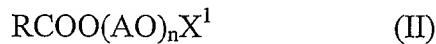
- (A) Claim 10 is rejected under 35 U.S.C. 103(a) as being obvious over DE 4,445,546 (DE '546);
- (B) Claims 10 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 00/02451 (see English equivalent CA 2,337,535 - hereinafter "CA '535"); and
- (C) Claims 16, 18 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over CA '535 as applied to claims 10 and 30.

**Applicants respectfully traverse Rejections (A), (B) and (C).**

**Regarding Rejection (A)**, in the outstanding Office Action, the Examiner first asserts that this rejection is under 35 USC 102(b), but it appears from the Examiner's comments that this is an obviousness rejection. Applicants respectfully request that the Examiner clarifies the basis for the rejection.

Applicants note that DE '546 only teaches lauric acid esters.

In response, Applicants have herein amended claim 10 to delete the possibility that the plant-activating agent is an ester. Specifically, the plant activating agent is a compound of formula (II),



wherein when n is zero in formula (II),  $\text{X}^1$  is a hydrogen atom.

As such, significant patentable distinctions exist between the present invention and the teachings of DE ‘546. Reconsideration and withdrawal of Rejection (A) are respectfully requested.

**Regarding Rejections (B) and (C)**, these rejections rely on the teachings of CA ‘535.

The following claim chart follows the Examiner’s comments in the outstanding Office Action.

Claim 10 (As appearing in the 3/23/’09 Amendment)	CA ‘535
A method of activating a plant by applying to a plant a plant-activating composition.	In the abstract, CA ‘535 teaches the application of the composition to plants. The Examiner states that the activation of the plant occurs inherently.
the plant activating composition comprises a fertilizer component,	page 11, lines 22-29
said plant-activating agent is a compound of formula (II), $\text{RCOO(AO)}_n\text{X}^1 \quad (\text{II})$ wherein when n is 1 to 30 in formula (II), $\text{X}^1$ is an alkyl or acyl group having 1-30 carbon atoms or an alkenyl group having 2-30 carbon atoms.	fatty alcohols or partial esters of fatty acids (which are used with the alkyl polyglycoside “APG” surface active agent in the “Magic Wet” composition used in the examples)
and wherein the plant-activating agent is in an aqueous solution or aqueous dispersion	At page 16, line 3, the composition is taught to be an admixture of the o/w type (oil in water type)
the plant-activating agent is in a concentration of 0.01 to 500 ppm	In tables 6-10, the Magic Wet composition is taught to be in concentrations of 10, 100 and 150 ppm.

As noted in this chart, the Examiner equates the fatty alcohols or partial esters of fatty acids (which are used with the alkyl polyglycoside “APG” surface active agent in the “Magic Wet” composition used in the examples) with the inventive plant activating agent of formula (II).

In response, Applicants have amended the proviso of claim 10. The amended proviso (1) excludes C13-29 fatty acid esters with no AO addition and the amended proviso (2) includes C13-29 fatty acid esters with addition of 1-30 moles of AO.

In view of the fact that the Examiner relates the partial esters of fatty acids (which are used with the alkyl polyglycoside “APG” surface active agent in the “Magic Wet” composition used in the examples) of CA ‘535 with the inventive plant activating agent, Applicants respectfully submit that the proviso of present claim 10 distinguishes the present invention from the teachings of CA ‘535. Reconsideration and withdrawal of Rejections (B) and (C) are respectfully requested.

#### Unexpected Results

It is Applicants' position that a *prima facie* case of obviousness cannot be said to exist over CA ‘535. However, assuming *arguendo* that a *prima facie* case of obviousness were to exist, the data in the present specification is evidence of the *unexpectedly superior properties* of the inventive composition as plant activating agents which overcomes the obviousness rejection.

The Examiner's attention is directed to the examples in the present specification which show that there is improved growth with the plant activating agent of Formula (II). Specifically, the Examiner's attention is directed to Tables A1 (test of reproductive ability using chlorella cells), A2 (test of hydroponics of tomato seedlings), A3 (test of soil-treatment for tomatoes) and A4 (test of soil-treatment for spinach) on pages 31-34, respectively.

For example, Table A1 shows at least a 27% increase in the reproductive ability of chlorella cells using the esters and acids of inventive Formula (II) over the lower molecular weight acids.

Also, Table A3 (page 33) shows the superior properties which are engendered by the combination of a compound of formula (II), RCOO(AO)<sub>n</sub>X<sup>1</sup>, with at least one of a surfactant

and a chelating agent, as presently claimed. Comparative Example A3-3 shows that a composition containing a C8 acid, caprylic acid, and a surfactant has a fresh weight amount of 94 which is much less than the fresh weight of 108 for Inventive Example A3-1 incorporating stearic acid and a surfactant in the test for soil treatment for tomatoes.

Based on this evidence in the specification, the skilled artisan would reasonably conclude that the inventive composition comprising a compound of formula (II),  $\text{RCOO(AO)}_n\text{X}^1$ , and at least one of a surfactant, fertilizing agent and a chelating agent has *superior* plant activating properties for all compounds over the range wherein R represents an alkyl or alkenyl group having 11 to 29 carbon atoms when compared to the compounds of CA '535.

In view of the fact that CA '535 does not teach or suggest such an improvement in properties based on the size of the fatty acid (ester) and at least one of a surfactant, fertilizing agent and a chelating agent, the inventive composition is unexpected based on the cited art. As such, the *prima facie* case of obviousness is overcome and withdrawal of the rejection is respectfully requested.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Garth M. Dahlen, Ph.D., Esq. Reg. No. 43,575 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

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Respectfully submitted,

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